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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

In re Applications of

GAF BROADCASTING COMPANY, INC.

For Renewal of the License  
of FM Broadcasting Station WNCN  
New York, New York

CLASS ENTERTAINMENT  
AND COMMUNICATIONS, L.P.

THE FIDELIO GROUP, INC.

For a Construction Permit

for a New FM Station at

) MM Docket No. 93-54

) File No. BRH-910201WL

) File No. BPH-910430ME

) File No. BPH-910502MQ

general partners: James H. Dowdy held a 33.3 percent voting interest and 26.45 percent ownership interest; Barbara J. Norris held a 33.3 percent voting interest and a 12.43 percent ownership interest; and Steven C. Williams held a 33.3 percent voting interest and a 12.43 percent ownership interest. The ownership of Class remained unchanged on the final date for filing amendments as of right, August 2, 1991.<sup>1</sup> As of this date, Class claimed 100 percent integration credit for its proposal to integrate all three of its voting principals into full-time station management (with Ms. Norris as the station's Operations Manager).<sup>2</sup>

On March 13, 1992, Class filed an amendment reporting the withdrawal of Ms. Norris and the transfer of her equity interest to Mr. Dowdy. That amendment did not disclose the disposition of Ms. Norris' 33.3 percent voting interest, however. In explanation of these significant changes, Class' amendment stated only that "Ms. Norris' withdrawal was occasioned by an impending change in her employment."

GAF filed Comments on Class' amendment on March 26, 1992, which sought the imposition of a condition in the Hearing Designation Order ("HDO") to prevent any upgrade. The HDO

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<sup>1</sup>This date fell 30 days from the FCC's public notice that the Class application was accepted for tender, Broadcast Applications, Report No. 15030 at p. 5, released July 3, 1991. See Revision of FCC Form 301, 4 FCC Rcd 3853, 66 RR 2d 519, 531 n.82 (1989) (subsequent history omitted).

<sup>2</sup>On July 31, 1991, Class filed an amendment increasing Mr.



accepted the amendment, but directed that "pursuant to longstanding Commission policy, no comparative advantage from this amendment will be allowed." DA 93-226, Chief, Audio Services Division, released March 15, 1993. Subsequently, in his Order requiring the filing of integration and diversification statements, the Presiding Judge cautioned that "[t]he integration showing shall not vary from the information set forth in the application." FCC 93M-134, released March 31, 1993.

The Class Integration/Diversification Statement does vary from the integration proposal in Class's application, as it was frozen at the amendment as-of-right date. The Statement lists only two general partners, James Dowdy and Steven C. Williams. No mention is made of their current voting interests, or the loss of a 33 percent voting principal after the relevant cutoff date. Nor does Class specifically state the amount of quantitative integration credit it will claim. The clear, but incorrect, implication of the Statement is that Class' comparative case has not changed and that it is attempting to claim 100 percent

proceedings are tried in a fair, orderly and timely fashion. The Commission does, however, recognize downgrades in an applicant's comparative position to reflect changes in its ownership structure, whether they occur voluntarily or by operation of law. VOB, Inc., 5 FCC Rcd 5872, 68 RR 2d 652, 655 (Rev. Bd 1990).

The Review Board has repeatedly rejected attempts by applicants to maintain full integration credit where a principal has voluntarily withdrawn. See, e.g., Central Texas Broadcasting Co., Ltd., 90 FCC 2d 583, 51 RR 2d 1478, 1483 (Rev. Bd 1982) (subsequent history omitted) (where 27.5 percent shareholder and proposed general manager withdrew after cutoff date, and sold stock to another 27.5 percent shareholder and proposed sales manager, integration credit for remaining shareholder limited to his original 27.5 percent); Birmingham Family Television, Inc., 91 FCC 2d 348, 52 RR 2d 525, 526-28 (Rev. Bd 1982) (substitution of a principal who would be able to integrate for one who had become unable to do would clearly be upgrading); Golden State Broadcasting Corp., 94 FCC 2d 212, 54 RR 2d 348, 351-52 (Rev. Bd 1983), set aside and remanded on other grounds (change in comparative coverage), 59 RR 2d 477 (1985) (where husband with 52 percent interest in an applicant acquired wife's 48 percent interest, because her physical and mental state would prevent her from functioning at the station, the applicant was not entitled to more than 52 percent integration credit).<sup>3</sup>

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<sup>3</sup>Furthermore, to credit the 33.3 percent voting interest formerly held by Ms. Norris to Mr. Dowdy would constitute an impermissible qualitative as well as quantitative upgrade,

In short, Class may not claim 100 percent integration credit because its general partner voluntarily chose, after Class' integration proposal became frozen, to accept employment that now makes it impossible to fulfill her integration proposal. Because Class's Integration/Diversification Statement refuses to address this matter, GAF requests that Class be directed to file an amended Integration Statement wherein it expressly claims no more than 66.7 percent integration credit.

WHEREFORE, in light of the foregoing, it is respectfully requested that the Presiding Judge direct Class to address the discrepancy between its original integration proposal and current integration statement, and to file an amended Integration Statement which is not at variance with the Presiding Judge's Order, FCC 93M-134.

Respectfully submitted,

GAF BROADCASTING COMPANY, INC.

  
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Aaron I. Fleischman  
Arthur H. Harding  
Christopher G. Wood

Its Attorneys

Fleischman and Walsh  
1400 Sixteenth Street, N.W.  
Washington, D.C. 20036

Date: April 28, 1993

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because on paper Mr. Dowdy's qualitative attributes appear to be superior. According to Exhibit 4 to Class' application, Mr. Dowdy has resided in New York City 27 years longer than Ms. Norris.

# CERTIFICATE OF SERVICE

I, Eve J. Lehman, a secretary at the law firm Fleischman and Walsh, hereby certify that I have this 28th day of April, 1993